

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

ECP PROPERTY II LLC,

Plaintiff,

-against-

JOSEPH NORTON,

Defendant.

COMPLAINT

CV 14-7298

COMPLAINT

Plaintiff, ECP Property II LLC, by undersigned counsel, complaining of the defendant, Joseph Norton, alleges as follows:

THE PARTIES

1. ECP Property II LLC (“ECP”) is a Delaware limited liability company that has its principal place of business at 383 Inverness Parkway, Suite 390, Englewood, Colorado 80112. The sole member of ECP is a citizen of Delaware for diversity purposes.

2. Joseph Norton (“Norton”) is an individual residing at 771 Thomas S. Boyland Street, Brooklyn, New York 11212.

VENUE

3. Venue of this action is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391(a), as Norton consented to jurisdiction in the Eastern District of New York and resides in the Eastern District of New York.

JURISDICTION

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 on the grounds that this civil action constitutes a controversy between citizens of different states and the amount in controversy exceeds \$75,000.00.

FACTUAL ALLEGATIONS

The Building Loan

5. On August 20, 2008, Riverrock Nehemiah Realty LLC (“Borrower”) and Banco Popular North America (“Banco Popular”) entered into a Building Loan Agreement (the “Building Loan Agreement”) and related agreements and documents that established a \$1,912,341.00 commercial loan (the “Building Loan”) to Borrower and otherwise to reflect certain loan agreements between the parties. A copy of the Building Loan Agreement is annexed hereto as Exhibit 1.

6. Borrower and Banco Popular entered into a \$1,912,341.00 Building Loan Note (the “Original Building Loan Note”) on August 20, 2008 that evidenced the Building Loan. A copy of the Original Building Loan Note is annexed hereto as Exhibit 2.

7. The Original Building Loan Note included Borrower’s promise to make certain payments to Banco Popular and to perform various other obligations.

8. Borrower subsequently entered into a Building Loan Note Extension and Modification Agreement (the “Building Loan Note Modification Agreement”) with Banco Popular on December 8, 2010. Among other things, the Building Loan Note Modification Agreement reduced the principal amount of the Original Building Loan Note to \$1,887,583.56 and extended the maturity date of the Original Building Loan Note to March 31, 2011. A copy of the Building Loan Note Modification Agreement is annexed hereto as Exhibit 3.

9. Together, the Original Building Loan Note and the Building Loan Note Modification Agreement are referred to as the “Building Loan Note.”

The Project Loan

10. Also on August 20, 2008, Borrower and Banco Popular entered into a Project Loan Agreement (the “Project Loan Agreement”) and related agreements and documents that established a \$349,669.00 commercial loan (the “Project Loan”) to Borrower and otherwise to reflect certain loan agreements between the parties. A copy of the Project Loan Agreement is annexed hereto as Exhibit 4.

11. Borrower and Banco Popular entered into a \$349,669.00 Project Loan Note (the “Original Project Loan Note”) on August 20, 2008 that evidenced the Project Loan. A copy of the Original Project Loan Note is annexed hereto as Exhibit 5.

12. The Original Project Loan Note included Borrower’s promise to make certain payments to Banco Popular and to perform various other obligations.

13. Borrower subsequently entered into a Project Loan Note Extension and Modification Agreement (the “Project Loan Note Modification Agreement”) with Banco Popular on December 8, 2010. Among other things, the Project Loan Note Modification Agreement reduced the principal amount of the Original Project Loan Note to \$97,327.83 and extended the maturity date of the Original Project Loan Note to March 31, 2011. A copy of the Project Loan Note Modification Agreement is annexed hereto as Exhibit 6.

14. Together, the Original Project Loan Note and the Project Loan Note Modification Agreement are referred to as the “Project Loan Note.”

15. Together, the Building Loan Agreement and the Project Loan Agreement are referred to as the “Loan Agreements.”

16. Together, the Building Loan Note and the Project Loan Note are referred to as the “Notes.”

17. Collectively, the Loan Agreements, the Notes, and all other related documents, instruments and agreements evidencing Borrower’s obligations and indebtedness to Banco Popular are referred to as the “Loan Documents.”

The Norton Guaranty

18. By the terms of a Guaranty of Payment dated August 20, 2008 (the “Original Payment Guaranty”), Norton absolutely and unconditionally guaranteed the performance and payment of Borrower’s obligations to Banco Popular. A copy of the Original Payment Guaranty is annexed hereto as Exhibit 7.

19. Norton subsequently executed a December 8, 2010 Reaffirmation of Guaranty of Payment (the “Reaffirmation Guaranty”) in favor of Banco Popular, whereby he reaffirmed and ratified the terms and conditions of the Original Payment Guaranty and acknowledged the extensions of the maturity dates of the Building Loan Note and the Project Loan Note. A copy of the Reaffirmation Guaranty is annexed hereto as Exhibit 8.

20. Together, the Original Payment Guaranty and the Reaffirmation Guaranty are referred to as the “Guaranty.”

Defaults and Acceleration

21. The Notes matured on March 31, 2011 (the “Maturity Date”).

22. Borrower defaulted on its obligations to Banco Popular under the Notes and the Loan Agreements by, among other things, failing to pay Banco Popular all amounts due under the Loan Documents on the Maturity Date.

23. Banco Popular, through its counsel, notified Borrower of Borrower's default and made demand upon Borrower for payment. Copies of demand letters from Banco Popular's counsel to Borrower are annexed hereto collectively as Exhibit 9.

24. Despite demand, Borrower failed and refused to make payment of its outstanding obligations to Banco Popular.

Banco Popular's Assignment of the Loan Documents to ECP

25. By a Loan Purchase and Sale Agreement dated September 3 2014, Banco Popular assigned to ECP all of Banco Popular's right, title, and interest in and to the Loan Documents and all amounts due thereunder.

26. Copies of the Allonges to the Building Loan Note and the Project Loan Note are annexed hereto collectively as Exhibit 10.

27. ECP, through its counsel, notified Norton of Borrower's default under the Loan Documents and made demand upon Norton for payment under the Guaranty. A copy of the demand letter from ECP's counsel to Norton is annexed hereto as Exhibit 11.

28. Norton defaulted under the Guaranty by failing and refusing to pay and perform thereunder.

29. To date, Norton remains in default under the Guaranty.

30. Pursuant to the Guaranty, there is due and owing to ECP from Norton as of November 26, 2014 the sum of \$2,352,168.24, plus interest, costs and fees, including attorneys' fees.

31. ECP's economic injury increases so long as the obligations owed by Norton remain unpaid and ECP must take action to enforce its rights.

32. ECP demands judgment against Norton for his breach of contract in the amount of \$2,352,168.24, or such amount as may be proved at trial, plus interest, costs and fees, including attorneys' fees.

WHEREFORE:

Plaintiff, ECP Property II LLC, demands:

1. On its claim against defendant Joseph Norton, judgment in the amount of \$2,352,168.24, or such amount as may be proved at trial, plus interest, costs and fees, including attorneys' fees.

2. On all claims hereunder, such other and further relief as maybe appropriate.

Dated: December 15, 2014

Leitess Friedberg PC

/s/ Gordon S. Young
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Attorneys for ECP Property II LLC